UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DARREN DeWALL, ATSHSHI HIRAGA
and BRAD SCHULTZ

Appeal No. 2005-1003
Application No. 09/967,249

ON BRIEF

Before KIMLIN, OWENS and PAWLIKOWSKI, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-43. Claims 1 and 15 are illustrative:

1. A gaming assembly comprising:

means for accepting a wager from a player;

a display for displaying one of a plurality of symbols in each of a plurality of cells,

a random generator for randomly selecting a symbol to be displayed in each of said cells independently of the random selection of a symbol in each of the other cells,

a game control for controlling game play in a primary game mode and a secondary event mode for controlling images displayed on the display and detecting the presence of a predetermined winning combination of symbols and for awarding a prize in response to a winning combination, and

a selector for allowing a player to individually select the number of cells to be independently of one another evaluated by the game control to detect the presence of a winning combination within the selected number of cells.

15. An assembly as set forth in claim 14 wherein said evaluation station comprises a pawn shop.

The examiner relies upon the following references as evidence of obviousness:

Moody et al. (Moody)	5,976,016	Nov. 2, 1999
Giobbi et al. (Giobbi)	6,155,925	Dec. 5, 2000
Payne et al. (Payne)	6,241,607	Jun. 5, 2001

Appellants' claimed invention is directed to a gaming assembly, such as a video slot machine, comprising a selector which allows a player to individually and independently select the number of cells that are evaluated by the game control to detect the presence of a winning combination. For example, in a display comprising a three-by-three matrix, i.e., three cells in each of three horizontal rows, and three cells in each of three vertical columns, the player may choose the first and third cells in the first row and the second cell in the third row to be the combination of three cells that are hoped to be the winning

combination. Hence, the winning combination of cells is not limited to three cells in a row, i.e., in a so-called payline.

Appealed claims 1-11, 20-32 and 41-43 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Payne in view of Giobbi. Claims 12-19 and 33-40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the stated combination of references further in view of Moody.

Appellants have presented separate substantive arguments only for claims 15, 16, 19, 36, 37 and 40, as a group. Accordingly, with the exception of this separately argued group of claims, all the appealed claims stand or fall together with claim 1.

We have thoroughly reviewed each of appellants' arguments for patentability. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejections for essentially those reasons expressed in the Answer, and we add the following primarily for emphasis.

There is no dispute that the gaming apparatus of Payne fails to allow the player to individually select the number of cells

independently of one another, and that Giobbi teaches that it was known in the art to employ scatter pay paylines in slot machines to enhance the perceived payoff of the game (see column 1, lines 64 et seq.). It is appellants' position that "it can not be obvious to individually select the number of cells to be placed in play independently of one another when the prior art only teaches the selection of a predetermined number of cells in a selected payline or in a randomly selected scattered 'payline' pattern" (page 4 of principal brief, penultimate paragraph). Appellant contends that the examiner improperly "equates the selection of a number of cells in scattered payline to the individual selection of number of cells independently of one another when they are completely different" (page 5 of principal brief, first full sentence). We understand appellants' argument to be that there is a patentable distinction between the claimed system, which allows the player to individually select cells in a scattered pattern, and the well-known system which allows the player to select a random pattern of cells generated by the system. While we agree with appellants that there is a distinction between the two systems, we concur with the examiner that such a distinction would have been obvious to one of ordinary skill in the art.

In essence, it is our view that since player selection of a particular payline was known in the art, and player selection of a scattered payline, albeit a system generated one, was known in the art, it would have been a matter of obviousness for one of ordinary skill in the art to broaden the selection parameters of the player to embrace the specific random pattern of cells desired. Manifestly, the gaming world is replete with games that allow a player to select a particular winning combination or pattern. The game of roulette is simply one example where the player selects a desired winning payline, i.e., a pattern of numbers on the roulette wheel. Appellants have apprised us of no nonobvious technology that allows for a player to select a scatter payline in lieu of one generated by the system.

As for separately argued claim 15, and the claims grouped therewith, which defines the evaluation station as comprising a pawn shop, we adopt the examiner's reasoning set forth at pages 14-15 of the Answer. Appellants' Reply Brief fails to address the substance of the examiner's reasoning underlying the rejection, but merely points to the examiner's recognition that the prior art does not teach a pawnshop, and that "[s]ince these claims recite a pawn shop, the rejection must fail" (page 2 of Reply Brief, last paragraph).

As a final point, we note that appellants base no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the prima facie case of obviousness established by the examiner.

In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

AFFIRMED

EDWARD C. KIMLIN)
Administrative Patent Judge)
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TERRY J. OWENS)
Administrative Patent Judge) BOARD OF PATENT
) APPEALS AND
) INTERFERENCES
)
BEVERLY PAWLIKOWSKI)
Administrative Patent Judge)

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Howard & Howard Attorneys, P.C.
The Pinehurst Office Center, Suite #101
39400 Woodward Avenue
Bloomfield Hills, MI 48304-5151